

[*McTiernan v. Public Service Co. of Colorado, Inc.*, 91-ERA-37 \(Sec'y Feb. 21, 1992\)](#)

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DATE: February 21, 1992
CASE NO. 91-ERA-37

IN THE MATTER OF
GEORGE MCTIERNAN,
COMPLAINANT,

PUBLIC SERVICE COMPANY OF COLORADO, INC.,
RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

ORDER APPROVING SETTLEMENT

Before me for review is the Recommended Decision and Order (R.D. and O.) of the Administrative Law Judge (ALJ) in this case arising under the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. sec. 5851 (1988). The ALJ recommends approval of the settlement agreement entered into by the parties, finding it to be fair, equitable and in the public interest.

In submitting a copy of the Settlement, Release and Confidentiality Agreement to the ALJ for review, Respondent's counsel emphasized the confidentiality provisions and requested on behalf of both parties that the unedited copy be destroyed or returned. I am unable to grant this request because the parties' submissions in response to the ALJ's July 31, 1991, Order Re: Basis of Settlement become part of the record. 5 U.S.C. sec. 556(e) (1988); see *Hamka v. The Detroit Edison Co.*, Case No. 88-ERA-26, Sec. Order to Submit Attachments, Dec. 9, 1991, slip op. at 2, n.1; *Thompson v. The Detroit Edison Co.*, Case No. 87-ERA-2, Sec. Order to Show Cause, April 26, 1990, slip op. at 5, n.3. With respect to provisions of the settlement

[PAGE 2]

agreement concerning confidentiality, I note that the Freedom of Information Act, 5 U.S.C. 552, requires federal agencies to disclose requested records unless they are exempt from disclosure under the Act. See *Daily v. Portland General Electric Co.*, Case No. 88-ERA-40, Sec. Order Approving Settlement and Dismissing Case, Mar. 1, 1990, slip op. at 1, n.1.

Section 210(b)(2)(A) of the ERA, 42 U.S.C. 5851(b)(2)(A), provides that "the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint." The Secretary's role is to review the terms of settlement agreed upon by the private parties to ensure that the settlement is fair, adequate and reasonable. See *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. United States Department of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2. [1] Accordingly, I have reviewed the unedited copy of the Settlement, Release and Confidentiality Agreement.

This settlement agreement may encompass matters arising under various laws, only one of which is the ERA. As my authority over settlement agreements is limited to such statutes as are within my jurisdiction and is defined by the applicable statute, see *Goese v. Ebasco Services, Inc.*, Case No. 88-ERA-25, Sec. Ord. Approving Settlement and Dismissing Case, Dec. 8, 1988; *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Ord., Nov. 2, 1987, and cases cited therein, I have limited my review of this agreement to determining whether its conditions are a fair, adequate and reasonable settlement of Complainant's allegations that Respondent violated the ERA. I find that the terms of the Settlement, Release and Confidentiality Agreement signed by the parties are a fair, adequate and reasonable settlement of Complainant's claim under the ERA.

[PAGE 3]

Accordingly, I approve the settlement agreement, and this case is dismissed with prejudice. See July 11, 1991, Stipulated Dismissal and Request for Order.

SO ORDERED.

LYNN MARTIN
Secretary of Labor

Washington, D.C.

[ENDNOTES]

[1] The Department of Labor does not simply provide a forum for private parties to litigate their private employment discrimination suits. Protected whistleblowing under the ERA may expose not just private harms, but health and safety hazards to the public. The Secretary represents the public interest in keeping channels of information open by assuring that settlements adequately protect whistleblowers. See *Daily v. Portland General Electric Co.*, Case No. 88-ERA-40, Sec. Ord. to Submit Settlement, Nov. 6, 1989, slip op. at 3; *Polizzi*

v. Gibbs & Hill. Inc., Case No. 87-ERA-38, Sec. Ord. Rejecting in Part and Approving in Part Settlement Submitted by the Parties and Dismissing the Case, July 18, 1989, slip op. at 2-3.